SHAMA MINERALS

IBLA 88-360 Decided April 29, 1991

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring lode mining claims null and void ab initio. IMC 126266, IMC 126267, IMC 126272, IMC 126279, IMC 126280.

Affirmed.

1. Courts--Mining Claims: Lands Subject to--Segregation--Withdrawals and Reservations: Effect of--Withdrawals and Reservations: Revocation and Restoration

   Where a Federal district court issues a preliminary injunction which has the effect of suspending the termination of a withdrawal or segregation of lands pursuant to a first form reclamation withdrawal, thereby reinstating the terms of the withdrawal, a mining claim subsequently located on land subject to that injunction is properly declared null and void ab initio.

2. Administrative Procedure: Burden of Proof--Rules of Practice: Appeals: Generally--Rules of Practice: Appeals: Statement of Reasons

   Any party appealing from a decision of an officer of the Bureau of Land Management has the burden of establishing error in the decision under appeal, by a preponderance of the evidence. Conclusory allegations of error, standing alone, do not discharge this burden.

3. Administrative Authority: Estoppel--Estoppel

   While situations may arise where the Government can be estopped because a private party, acting in reliance upon Governmental conduct, was prevented from obtaining a right which might have been obtained, the Government can never be estopped where the effect of the estoppel is to grant someone a right which was not available in the first instance.

APPEARANCES: James R. Bennetts, Esq., Challis, Idaho, for appellant; Robert S. Burr, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Boise, Idaho, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Shama Minerals has appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM declaring certain of its lode mining claims, JS 10006 and JS 10007 (IMC 126266, IMC 126267), JS 10012 (IMC 126272), an (IMC 126279, IMC 126280), located on August 22, 25, and 27, 1987, null and void ab initio. We affirm.

The above claims were part of a total of approximately 5,960 claims filed by appellant over a 15-month period i The claims at issue were located within the SW¼ sec. 1, T. 14 N., R. 18 E.,
and the N½ sec. 2, T. 14 N., R. 18 E., Boise Meridian, Custer County, Idaho. In its decision, BLM noted that the lands in t patented on April 23, 1914, without a mineral reservation. Furthermore, BLM noted that the remaining lands in the SW¼ unappropriated lands within sec. 2, except for lot 1, had been withdrawn from public entry under a first form reclamation Secretarial Orders issued on November 4 and 5, 1943.

BLM recognized that Public Land Order (PLO) No. 6150, which issued
on February 8, 1982, had purported to restore the lands withdrawn by
these Secretarial Orders to mineral entry pursuant to section 204 of the Federal Land Policy and Management Act of 1976 (FL (1988). But, BLM noted, a preliminary injunction had been issued by the Federal District Court for the District of Columb 1986, in National Wildlife Federation v. Burford, 676 F. Supp. 271, aff'd, 835 F.2d 305 (D.C. Cir. 1987) (NWF), which ha ment of the Interior from reopening to mineral entry, under authority of section 204 of FLPMA, any lands which had been wi 1981. Included within the scope of the injunction were the lands purportedly restored to entry by PLO 6150. Therefore, s by the subject claims consisted of either land patented without a mineral reservation or land subject to the NWF injunctio mining claims to be null and void ab initio. Appellant timely appealed
to this Board.

In its statement of reasons (SOR) in support of its appeal, 1/ appellant asserts that, prior to its location of the mi information from BLM concerning the status of the lands in question. Appellant avers that the various maps and plats whi to reveal that the subject land was withdrawn and that, in reliance thereon, appellant expended "considerable time and expe Appellant objects to the fact that it was not timely advised as
to the status of the land.

1/ In its SOR, appellant also referenced two other claims, the JS 1247
and JS 1248. These claims, however, were the subject of a separate decision issued by BLM on Feb. 18, 1988. Appellant's this decision were dismissed as untimely by the Board on June 7, 1988. See IBLA 88-359, Order of June 7, 1988. Thus, thes subject to review in this appeal.

Additionally, appellant complains of the "piece-meal" adjudication of its claims and broadly asserts, inter alia, tha
was not in accordance with the applicable laws and "questions [whether] these particular lands were the ones in fact withdraw
appellant challenges the applicability of the NWF order to the lands in issue and suggests that BLM "has had ample time to h
especially if Appellant's understanding is correct to the effect that the appellate court in that jurisdiction has directed both
Judge Pratt and [BLM] to get busy in order to resolve the matter forthwith" (SOR at 2).

[1] Before examining appellant's contentions, it is useful to briefly limn the history of the NWF litigation. On Ju
Wildlife Federation (NWF) filed suit in Federal district court challenging the Department of the Interior's termination of va
and revocation of withdrawals which had taken place on or after January 1, 1981, as inconsistent with the Department's sta
FLPMA. An initial preliminary injunction issued on December 4, 1985, which was thereafter vacated and subsequently
February 10, 1986. See National Wildlife Federation v. Burford, supra. Suffice it for our present purposes to note that, as
prohibited the Department from taking any action inconsistent with such withdrawal or classification as was in effect on Janua
date of this injunction was February 18, 1986. See Harold Bennett, 107 IBLA 291 (1989). This decision was affirmed by
the District of Columbia Circuit on December 11, 1987.

Thereafter, however, the district court examined the standing of
NWF to proceed with its suit. By decision dated November 4, 1988, the district court concluded that NWF did not have the re
standing and, accordingly, dismissed the suit, vacated the preliminary injunction, and denied NWF's motion for a permanent
Wildlife Federation v. Burford, 699 F. Supp. 327 (D.D.C.). On appeal, this decision was reversed by the Court of App
Federation v. Burford, 878 F.2d 422 (D.C. Cir. 1989). However, the Supreme Court granted a writ of certiorari and, on Jun
decision of the Court of Appeals. See Lujan v. National Wildlife Federation, 110 S. Ct. 3177. Thus, the preliminary injun
in issue herein effectively terminated on November 4, 1988.

It must be pointed out, however, that the mere fact that the injunction has been dissolved does not make it a nul
we have noted on numerous occasions, mining claims located on land withdrawn from mineral entry are null and void ab i
revocation of the withdrawal does not breathe new life into such void claims. See, e.g., Kathryn J. Story, 104 IBLA 313 (19
54 IBLA 103 (1981); David W. Harper, 74 I.D. 141 (1967). Thus, the fact that the NWF injunction has now been dissolved
constitute a bar to the initiation of rights under the mining laws would not affect the validity of the subject claims if, in point
at
a time when the land was subject to the injunction and, as a result, not available for appropriation under the mining laws.

[2] As noted above, appellant broadly asserts that the original withdrawals were not made in accordance with th fails, however, to provide any particulars delineating in what manner it contends the withdrawals were contrary to the applicab has repeatedly noted, conclusory statements of law, unsupported by factual or legal analysis, do not suffice to establish error in See, e.g., United States v. Fletcher De Fisher, 92 IBLA 226 (1986); United States v. Conner, 72 IBLA 254 (1983); New En 200 (1979). Inasmuch as appellant has failed to provide any basis for its assertion that the original withdrawals were not in the Board will decline to indulge in speculation on the matter. Appellant's objection is rejected.

Similar summary treatment of appellant's statement that "Appellant questions [whether] these particular land withdrawn" is warranted. Appellant bears the burden not merely of "questioning" a decision under appeal but of establishing e had reason to believe that the land withdrawn by the Secretarial Orders of November 4 and 5, 1943, did not include the land v appellant should have provided some explanation of the reasons animating its uncertainty. Once again, appellant has merely gation, leaving it to this Board to attempt to flesh out the substance of its concern. We decline to do so.

[3] The essential question, of course, is whether or not the claims were located on lands not open to entry and, as closed to the initiation of mining claims at the time in question, whether appellant's asserted reliance on BLM's failure to in status of the land provides a basis for avoiding a finding that the claims were null and void ab initio.

Insofar as the first aspect of this question is concerned, it is clear that the effect of the preliminary injunction in N original order of withdrawal so that the lands covered therein were not available for appropriation between February 18, 19 1988. See Harold Bennett, supra; Chester C. Reddeman, 101 IBLA 33 (1988). According to the map submitted by appell of the claims, the lands embraced by lode mining claims JS 10006, JS 10007, JS 10012, and JS 10019 are totally within th mining claim JS 10020 is located partially within the withdrawn area and partially within the boundaries of the land pat reservation in 1914. 2/ Since all five of these claims were located between August 22 and 27, 1987, during a period of time in which the NWF injunction was in effect, they must all be deeme

Appellant attempts to avoid this result by essentially arguing that the Government should be estopped from invalidating its claims since the

2/ Appellant has not challenged BLM's assertion that the land in the SW¼ SW¼ was patented without a mineral reservati

Government failed to inform appellant that the land was not available for selection. The invocation of estoppel in the situatio record is barred for a fundamental reason.

While the courts and the Department have recognized that circumstances may exist where the Government can be es party, acting in reliance upon Governmental conduct, was prevented from obtaining a right which might have been obtained, th be estopped where the effect of the estoppel is to grant someone a right which was not available in the first instance. See, e.g., 113 (1986), aff'd, Ptarmigan Co. v. United States, A88-467 (D. Alaska Mar. 30, 1990); Edward L. Ellis, 42 IBLA 66 (1979 72 (1979). Since the invocation of estoppel would, in this case, result in the granting of a right not authorized by law (the l on land not open to mineral appropriation), it cannot be permitted. See 43 CFR 1810.3.

Moreover, appellant should not be permitted to shift the responsibility for its error to BLM. While it is unfortu plat which appellant obtained did not correctly indicate the present status of the lands in question, both the 1982 order revoking the reclamation withdrawal and the text of the NWF injunctio the Federal Register. See 47 FR 6856 (Feb. 17, 1982); 51 FR 5809 (Feb. 18, 1986). Thus, appellant is properly charged with of the effect of the injunction and the fact that, by its terms, it covered the land restored to entry in 1982. See Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). Thus, while appel ignorant in fact, it was not ignorant in law. Estoppel cannot lie where the party seeking to raise the defense is chargeable with the knowledge of the true facts. See generally John Plutt, Jr., 53 IBLA 313, 317 (1981). For this reason, alone, the estoppel claim must b

Finally, appellant objects to what it considers to be BLM's piecemeal rejection of its locations, arguing that it p on appellant's resources in responding to multiple decisions. This Board has recently expressed a similar concern as to the is sions relating to a specific determination. See Cities Service Oil & Gas Corp., 117 IBLA 17, 25-27, 97 I.D. 243, 248-49 (19 involved a situation in which the Minerals Management Service had issued four separate decisions relating solely to the ques assessment for natural gas liquid products processed through the Grand Chenier Processing Plant and the Lake Charles Fr that case that the multiplicity of decisions ultimately concerning the same issue did place an unfair burden on the appellant

In this case, by contradistinction, no such actions have occurred. Appellant seems of the view that BLM should of its claims simultaneously. When one remembers that appellant recorded a total of 5,960 location notices with the Idaho Stat period which were serialized under 25 different case files (see BLM Answer at 4), it is obvious how unrealistic appellant's

event, we are unaware of any situation in which BLM issued multiple decisions with respect to individual claims. Thus, appellant's objection to the actions undertaken by the Idaho State Office with respect to its locations.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 4 appealed from is affirmed.

James L. Burski
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge